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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,925	01/02/2001	Dauna R. Williams	056205-5001US	1241
9629 7590 01/28/2009 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004				
EXAMINER ALVAREZ, RAQUEL				
ART UNIT 3688		PAPER NUMBER		
MAIL DATE 01/28/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/752,925

Applicant(s)

WILLIAMS, DAUNA R.

Examiner

Raquel Alvarez

Art Unit

3688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is in response to communication filed on 11/17/2008.
2. Claims 18-34 are presented for examination.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 18-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trewitt et al. (6,134,531).

With respect to claim 18, Trewitt teaches a computer system for gathering data to be used in scripting, directing, writing, or producing a show (Abstract).

means for sending an electronic query to a member of a test audience, wherein said query elicits an electronic feed back message (see Figure 5) and means for electronically transmitting data comprising said feedback message, wherein said data is electronically analyzed and utilized in development of said show (col. 1, lines 21-28 and col. 2, lines 16-22).

With respect to the data being analyzed in the development of said show prior to the program being broadcast. Trewitt teaches using feedback from the audience in a broadcast radio or TV program. Trewitt is silent as to using the feedback prior to the program being broadcast. Official Notice is taken that it is old and well known to polling

a group of viewers of a TV show or the like in order to develop similar, episodic shows, subsequent or follow up TV or radio program in order to determine if the follow up or similar shows are going to be successful and to target the subsequent shows accordingly.

With respect to claims 19, 20, Trewitt further teaches that the show comprises a television show (television program 111).

With respect to claims 23-24, Trewitt further teaches that said transmitting and receiving are performed via the Internet or via one or more viewer portals (see Figure 1).

With respect to claim 25, Trewitt further teaches that the data is transmitted to a broadcaster (see Figure 1, 110).

Claim 26 further recite that the feedback message is to be incorporated into the script of a show scheduled for broadcast within seven days. Trewitt teaches that the feedback messages are incorporated into the broadcast show. Trewitt is silent as to how long it takes for the user's feedback to be incorporated into the show. Incorporated the user's input within seven days will allow proper and ample of time for the show to be edit with the new content. It would have been obvious to a person of ordinary skill in the

art at the time of Applicant's invention to have included incorporating the user's input within 7 days in order to obtain the above mentioned advantage.

Claims 21-22 further recite structuring the queries into multi-tiered manner based on when a tier of questions can be incorporated into said story. Trewitt doesn't specifically teach structuring the queries into a multi-tiered manner based on when a tier question can be incorporated into the story. Official notice is taken that it is old and well known to structure queries/questions in a multi-tiered manner based on when a tier questions is to be incorporated. For example, based on the stage of when a new product or service, will be marketed different level of information is needed for the customers in order to fully develop the product/services and the information or questions on the product to be developed will change or structured based on when the information is needed or can be incorporated into the development of the product. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included structuring the queries into multi-tiered manner based on when a tier of questions can be incorporated into said story in order to achieve the above mentioned advantage.

Claims 28-33 further recite that the query further comprises a prequel-mercial to gather feedback for initial episodes, to educate the audience about the show, promote the show, to provide portions of the storyline that are supportive of the show. Trewitt doesn't specifically teach that the questions/query comprises a prequel-mercial to

gather feedback for initial episodes, to educate the audience about the show, promote the show, to provide portions of the storyline that are supportive of the show. Official notice is taken that it is old and well known in TV shows to place commercials promoting responses to shows, educating the audience of the upcoming shows in order to promote the upcoming events. For example, previews of upcoming shows promote audience participation and viewership of the show, as well as educate and promote the show and shows the viewers mini-portions of the upcoming shows, the viewers feedback is measure by the viewership of the show. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included query of prequel-mercial to garner feedback for initial episodes, to educate the audience about the show, promote the show, to provide portions of the storyline that are supportive of the show in order to obtain the above mentioned advantage.

Claim 34 further recites that the prequel-mercial comprises product placement advertisement within said storyline. Official notice is taken that it is old and well known in marketing to provide advertisements/information/products related to the information that the user is viewing. For example, certain websites will provide advertisements or the like based on the content of the web page that the user is viewing. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included prequel-mercial comprises product placement advertisement within said storyline in order to better target the product placements.

Response to Arguments

5. With respect to claim 21, applicant argues that the Official Notice taken doesn't address the limitation "said query is part of a plurality of queries structured in a multi-manner based on when a tier of questions and responses can be incorporated into said show" The Examiner took Official Notice of such and Applicant doesn't see any apparent connection between marketing goods or services with a multi-tiered plurality of queries whose responses can be incorporated into a television show. The Examiner wants to point out that the claims were rejected under the doctrine of 103 and should be argued accordingly. Trewitt was cited for incorporating responses into a television show and the Official Notice taken was merely to support the general notion that asking multi-tiered questions on an event that it is being developed is well known. In the example given by the Examiner it pertains to developing a product or service and nothing in this known practice of asking multi-tiered questions when an event is being developed prohibits it for the event to be a TV show instead of a product or service, because in any case the need to ask multi-tiered questions in the development of a product or service or TV show still exists in order to receive user's input along the way.

6. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

7. According to *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," *id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that "the principles laid down *Graham* reaffirmed the 'functional approach' of *Hotchkiss*, 11 How. 248." *KSR*, 127 S.Ct. at 1739 (citing *Graham*, 383 U.S. at 12 (emphasis added)), and reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." In this case, the Examiner feels that it will have been obvious given the Trewitt reference to structure multiple tiered questions that can be incorporated into the show as explained above. If a person of ordinary skill in the art can implement a predictable variation, § 103 likely bars its patentability. *Id.* at 1740, 82 USPQ2d at 1396.

8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Point of contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raquel Alvarez whose telephone number is (571)272-6715. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James w. Myhre can be reached on (571)272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raquel Alvarez/
Primary Examiner, Art Unit 3688

Raquel Alvarez
Primary Examiner
Art Unit 3688

R.A.
1/23/2009